IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 22883 of 2004

Between:

Pydi Chiranjeevulu S/o Gaddenna
r/o Lakumdiddi (Villgage), Kotabommali Mandal, Srikakulam

District (SC.NO. 49)

..... PETITIONER

AND

1 Transmission Corporation of A.P., Limited, (APTRANSCO) rep by Chief Managing Director, Vidyut Soudha, Khairatabad, Hyderabad
2 The Assistant Divisional Engineer, (Electrical), Operation, Eastern Power Distribution Company of A.P. Ltd., Tekkali Srikakulam District

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction more particularly one in the nature of writ of Mandamus declaring the provisional assessment notice in letter No. ADE/O/TKL/D. No. 565/04, dt 10-10-2004 of the 2nd respondent as highly illegal, arbitrary, unjust and contrary to section 126 of the Electricity Act, 2003 and consequently set a side the same and pass such other order or orders as this Hon'ble Court may deems fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.D.V.NAGARJUNA BABU

Counsel for the Respondents:Mr.M.Subba Rao (SC) .

The Court, at the stage of admission, made the following :

ORDER:

The petitioner had established a non-trading rice mill in Lakumdiddi Village, Kotabommali Mandal, Srikakulam District. It is provided with electricity supply. An inspection was made by the officials of the respondents on 10.10.2004. They noticed some alleged acts of pilferage on the part of the petitioner. On the basis of the inspection, an order of provisional assessment was served, assessing the value of the pilfered energy at Rs.3,57,103/-. Petitioner was informed that if he wants the offence of pilferage to be compounded, he can deposit a sum of Rs.30,000/-. Petitioner claims to have paid the same.

The power supply of the petitioner was disconnected on the ground that the amount representing the value of pilfered energy has not been paid. That action of the respondents is challenged in this writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

Several contentions are urged on behalf of the petitioner touching on the interpretation of the provisions of the Electricity Act, 2003, as well as various acts and omissions on the part of the respondents. It is not necessary to go into the same.

Petitioner is served with an order of provisional assessment. This is to be followed by a show cause notice. Thereafter, an order of final assessment has to be passed by the competent authority, duly taking into account the explanation that may be submitted by the petitioner, and holding such enquiry as is necessary. The actual liability of a consumer to pay any amount on the allegations of pilferage would arise only when an order of final assessment is passed. The disconnection of power supply on the ground that the amount indicated in the order of provisional

assessment is not paid, was held to be illegal by a Division Bench of this Court in its order in W.A.Nos.452 and 477 of 2004. It was held that the order of provisional assessment is almost in the form of a show cause notice, and no liability can be fastened on a consumer, on the basis of such proceedings.

Following the same, the writ petition is allowed directing that the respondents shall restore the power supply to the petitioner without insisting on payment of any amount shown in the order of provisional assessment. The power supply shall be continued, as long as the petitioner pays the actual consumption charges. The petitioner would be liable to pay any amount towards the value of pilfered energy, only after an order of final assessment is passed. There shall be no order as to costs.

_____

L.NARASIMHA REDDY, J

Dated : 10th December, 2004

Note: Furnish copy by 13.12.2004.

(B/o.)

Ts

-

To

1 The Chief Managing Director, Transmission Corporation of A.P., Limited, (APTRANSCO), Vidyut Soudha, Khairatabad, Hyderabad
2 The Assistant Divisional Engineer, (Electrical), Operation, Eastern Power Distribution Company of A.P. Ltd., Tekkali Srikakulam District

3 Two C.D. copies.